

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 16 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0238-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARL ELLIOTT, JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200501225

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Law Offices of Harriette P. Levitt
By Harriette P. Levitt

Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Petitioner Carl Elliott, Jr. challenges the trial court's denial of a petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. In it, he sought incarceration credit against the sentences he currently is serving in Arizona for time he had spent in federal custody in Florida for a conviction and sentence that subsequently

were vacated.¹ We will not disturb a trial court's ruling on a petition for post-conviction relief unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In March 2006, the trial court placed Elliott on five years' probation in this case, to be served concurrently with his probation in Pinal County cause number CR200400960, and ordered him to register as a sex offender. He absconded to Florida the following month, giving rise to both a warrant for his arrest and a new charge against him in Pinal County cause number CR200600993, based on his failure to keep authorities apprised of his address.

¶3 According to his petition for post-conviction relief, Elliott was arrested in Florida in August 2007, taken into federal custody, and sentenced in December 2007 to serve thirty months in prison for the offense of failing to register as a sex offender in Florida. Further, he alleged, after he had served approximately fourteen months of that sentence, his conviction was overturned, and he was released from federal custody but detained based on the outstanding Arizona warrants for his arrest.

¶4 After he was returned to Arizona, Elliott's probation was revoked, and he was convicted of the new charge against him in cause number CR200600993 pursuant to a plea. In March 2009, the trial court sentenced him in all three cases to a combined total of eight years' imprisonment. He then filed his notice of and petition for post-conviction relief in this proceeding.

¹The trial court granted relief on one of the two other issues Elliott raised in his petition below and noted that the other had become moot.

¶5 Section 13-712(B), A.R.S., provides as follows: “All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.”² In his petition below, Elliott argued he was entitled to credit for the fourteen months he had spent incarcerated in Florida because that federal conviction and sentence ultimately had been vacated, because there had been an Arizona “hold” on him “during the entire time [he] was in custody on the federal case,” and because otherwise he would “essentially not receive[] any credit for the time he spent in federal custody.”

¶6 Neither in his petition for post-conviction relief nor in his petition for review has Elliott cited any authority to support his contention that the existence of an Arizona detainer or “hold” for him meant that the time he spent serving a federal sentence in Florida was also “time spent in custody pursuant to” his three Arizona offenses. *See* § 13-712(B). That his federal conviction and sentence ultimately were vacated did not somehow transmute the months he had been imprisoned in Florida for the federal offense into time also spent “pursuant to” his pending Arizona offenses. And there is nothing in the record to show that, without the Arizona detainer, Elliott would have spent any less time in federal custody before that conviction and sentence were overturned. It follows that he cannot be said to have been imprisoned in Florida

²Both Elliott and the court have referred to the statute by its former number, A.R.S. § 13-709(B). It was renumbered as § 13-712(B), effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, § 27.

“pursuant to” the Arizona offenses for which he was later sentenced following his release from federal custody and extradition to Arizona. *See* § 13-712(B).

¶7 The trial court correctly ruled Elliott was not entitled to presentence credit against his Arizona sentences for the time he had spent in custody in Florida. The court therefore did not abuse its discretion in denying post-conviction relief. Although we grant Elliott’s petition for review, we deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge